

SERVICE DATE – SEPTEMBER 10, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-398 (Sub-No. 7X)

SAN JOAQUIN VALLEY RAILROAD COMPANY
–ABANDONMENT EXEMPTION–
IN TULARE COUNTY, CA

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: September 9, 2008

By decision and notice of interim trail use or abandonment served on June 6, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by San Joaquin Valley Railroad Company (SJVR) of a 30.57-mile portion of the South Exeter Branch between milepost 268.60 at Strathmore and milepost 299.17 at Jovista in Tulare County, CA, subject to environmental, trail use and employee protective conditions. The exemption was scheduled to become effective on July 6, 2008, unless an offer of financial assistance (OFA) was filed on or before June 16, 2008.¹

On June 13, 2008, the Board of Supervisors of the County of Tulare (the County) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the instant 30.57-mile portion and the adjoining 9.20-mile portion of the South Exeter Branch that was proposed for abandonment in STB Docket No. AB-398 (Sub-No. 8X). On June 16, 2008, Tulare Valley Railroad Company (TVRR) also timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 30.57-mile rail line. On June 17, 2008, SJVR filed a response to the County's OFA.

In a decision served on June 20, 2008, the Board, by the Director of the Office of Proceedings, found that both the County and TVRR were financially responsible and postponed the effective date of the exemption to permit the OFA process to proceed. The Board noted that, when there are multiple offers, the carrier must select the offeror with which it wishes to transact

¹ In a concurrently served decision in San Joaquin Valley Railroad Company–Abandonment Exemption–in Tulare County, CA, STB Docket No. AB-398 (Sub-No. 8X) (STB served June 6, 2008), the Board denied SJVR's petition for exemption to abandon an adjoining 9.20-mile portion of the South Exeter Branch located north of the subject line between milepost 259.40 near Exeter, CA, and milepost 268.60 at Strathmore.

business. The Board directed SJVR to provide written notification of its selection to the Board and all of the parties by July 1, 2008.²

On July 1, 2008, SJVR submitted a letter stating that it wanted to negotiate for the purchase of the 30.57-mile line with TVRR. By letter filed on July 16, 2008, TVRR notified the Board that, although it had not reached an agreement with SJVR, the offeror did not wish to file a request that the Board set the terms and conditions for purchase of the line.

When the offeror initially selected by the abandoning rail carrier does not file a request to set terms and conditions and does not purchase the line through private negotiations, the other offeror—in this case the County—has 10 days to file a request that the Board set terms and conditions for purchase of the line.³ Accordingly, by pleading filed on July 28, 2008, the County requested that the Board set terms and conditions for the sale of the 30.57-mile line because it and the railroad were unable to agree on the sale price.

By decision served on August 26, 2008, the Board set the purchase price for the line at \$3,308,000 and established terms for its transfer. The County was given until September 5, 2008, to withdraw its offer or to refuse to accept the terms and conditions set by the Board. On September 5, 2008, the County filed a letter stating that it did not wish to purchase the line based on the terms and conditions set by the Board.

When an entity offering to purchase a line later is not willing to accept the terms and conditions set by the Board, the Board will serve a decision vacating the decision that postponed the effective date of the decision granting the abandonment exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(h)(7). Accordingly, the OFA process will be terminated, and the June 20 decision will be vacated to permit the prior abandonment authorization for the 30.57-mile line to become effective on the service date of this decision. Because a sale of the line will not occur under the OFA provisions, the trail use condition imposed in the Board's decision served on June 6, 2008, will run 180 days from the service date of this decision (until March 9, 2009).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The OFA process in this proceeding is terminated.
2. The June 20, 2008 decision is vacated to the extent that it postponed the effective date of the abandonment exemption to permit the OFA process to proceed. The abandonment exemption will be effective on the service date of this decision, subject to the previously imposed conditions.

² As to the County's offer to acquire the 9.20-mile section of the line, the Board noted that the agency has no authority to consider the offer as part of the OFA here, but that the parties could negotiate for that segment's sale privately.

³ See 49 CFR 1152.27(l)(2)(i).

3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary